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Dialectical Thinking of Jurisprudence and Legal Philosophy: From the Understanding in the Chinese Context

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Abstract

In China, many legal scholars are easily confused the concept of legal philosophy with the concept of jurisprudence. Therefore, it is necessary to trace the origins of these two concepts to review their meanings carefully. To distinguish their meanings and relationships, we must combine domestic law study with Western methodology study. Because we need rightfully understand the meaning of the target concept in its motherland, western world, and then bring it back in Chinese context without causing unnecessary conflicts or something incomprehensible. Therefore, firstly, the author seeks the original meaning of the concept of legal philosophy and the concept of jurisprudence in western world. Then, the author focuses on the understanding of domestic legal scholars of these two concepts. Finally, the author gives a clear conclusion based on evidences and analysis.

Key words: Jurisprudence; Legal philosophy; Dialectical thinking

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INTRODUCTION

Different legal scholars have different views on the question of which comes first, jurisprudence or legal philosophy? Although their viewpoints are different, they all make some sense in some degree. From the perspective of objective dialectics, the concept of "legal philosophy" appears earlier than the concept of "jurisprudence". The concept of "legal philosophy" was put forward by the German natural scientist and jurist, Leibniz(Zhang, 2009, p. 31). Besides, the British legal scholar, John Austin(1790-1859) also make an effort in the creation of this concept by publishing several related books(Sun & Xia, 2004, p. 22). In modern times, as the development of legal, the distinction between "jurisprudence" and "legal philosophy" should be clearer and clearer(Liu, 2006). In the legal field of China, we did not accept the concepts of "legal philosophy" and the concepts of "jurisprudence" until the 20th century. At that time, the introduction of Western legal thinking into China had caused a significant impact on our legal research field. The conflicts between common law and Civil law make our legal study experience a difficult time. The development of the concept of "legal philosophy" and the concept of "jurisprudence" is the very example derived from that time. To be specifically, it is a problem of translation. These two concepts were translated into many different versions and used inconsistent.

1. THE ORIGIN AND DEVELOPMENT OF LEGAL PHILOSOPHY AND JURISPRUDENCE

1.1 The Etymology of Legal Philosophy

The term of "legal philosophy" means the philosophy of law in English. In North America, the concepts used in "legal philosophy" are "Philosophy of Law", "Legal Philosophy" or (unusually used) "Jurisprudence". "Legal Philosophy" is a modern Concept like "Legal History" and "Legal Theory". In other words, it does not have a long history. It is a concept of legal positivism. In China, we use the term of "Philosophy of Law". It shows

that the part of law and the part of philosophy are in an equally important position in this one concept. The term of "legal philosophy" is "Rechtsphilosophie" in German. The creation of the " Rechtsphilosophie " is by the combination of Rechts and Philosophy in German. This concept was first elaborated in the book named "The New Approach to Law Teaching", and the author of this book is Leibniz. From then to the 19th century, scholars' discussion of legal philosophy was only within the general principles of natural law. The reason is that natural law thought was prevalent at that time. However, since the Enlightenment, there has been a wave of criticism of natural law in the society, and the research focus of the legal field has begun to shift from the natural law toward the positive law step by step. Most people think that the term of "legal philosophy" was created during this period. Scholars led by Kant put forward the legal principles of metaphysics and brought a reform in legal field. This new concept was elaborated carefully in the book of " Metaphysic of Morals" ". At the same time, Gustav Hugo who was the first scholar put forward this concept in his book. Since then, this new concept starts to replace the previous concept of " Principles of natural law." But it was not accepted by the majority of legal scholar until Hegel updated the concept of "legal philosophy" in the book named" Philosophy of right" in 1831. But the scholar who defines this concept best is Vincennes and he gave this definition in one of his book named "Legal Philosophy in Natural Law" in 1839. In this book, he wrote that the subject of legal philosophy is a reality of the world and the term of legal philosophy is transformed from the concept of legal abstraction. By this way, the study of legal philosophy is officially transferred from the field that part belong to philosophy and part belong to law to the single field of law (Del Vecchio & Martin, 1953; Shen, 1992, p. 3).

During the second half of the 19th century to the beginning of the 20th century, legal philosophy was widely spread in the German-speaking region as well as in the whole European continent. Under this influence, various works and textbooks on the theme of "legal philosophy" were published. Although the theme was the same in those books, their definition of the term of "legal philosophy" were different because the authors of these boos were from different legal backgrounds and their understanding were different with each other. In the 1920s, Stamler wrote a book named " Lectures on the Philosophy of Law ", which caused a significant impact on the concept of legal philosophy. Since then, legal philosophy became an independent study field in law as a discipline of basic legal theory. The research of legal philosophy has also been expanded, including both the general theory of law and other theories of application of the law. With the widespread of civil law, the study of legal philosophy in Latin American and Asian have also been affected by this change in European continent in some degree. China, as part of Asian, of course is also under this influence.

1.2 The Etymology of Jurisprudence

Generally speaking, the concept of jurisprudence can be traced back to the legal thoughts of ancient Greece and ancient Rome. From the 3rd to the 2nd century BC, the term of "jur prudens" used by the Roman jurist Urban means the knowledge about the matter of God and human, and the judgment of just and unjust. However, term of "juris prudens" was developed into various meanings in the long time of history. Now, the word "jurisprudenz" refers to jurisprudence in German (He, 1996, p. 14).

In the second half of the 19th century, the British Prime Minister (Sir Henry Maine, 1822-1888) began to promote historical jurisprudence, which focused on historical and comparative study methods (Cocks, 2010, pp. 247-257). In the 20th century, under the influence of pragmatism, Roscoe Pound (1870-1964) from the United States began to advocate that the sociological jurisprudence of the law should be used as a means of social control. Besides, various legal philosophies under the influence of Philosophy and ethics was showed up on the European continent(Sun & Xia, 2004, p. 23). With the deepening of exchange and communication with the concept of legal philosophy in the European continent, some Anglo-American legal scholars started using the concept of legal philosophy, while some Anglo-American scholars began to avoid the use of the concepts of jurisprudence and legal philosophy by using another term, "legal theory". Therefore, it is a difficult thing to figure out what are the meanings of these three terms, "jurisprudence", "legal philosophy" and "legal theory " when these terms are used in such an inconsistent situation.

On the one hand, the concept of "jurisprudence" in Britain and the United States has a metaphysical character compared with the concept of legal philosophy in the European continent. In common law system, the scientific investigation accounts for a large proportion in the study of jurisprudence. Besides, the distinction between legal history, comparative law, and the sociology of law are also so vague. Since Hart (AHart, 1907-1993) published his famous book named "The Concept of Law" in 1961, analytical jurisprudence has caused a worldwide impact, and since John Rawls from the United States (1921) published his famous book named " A Theory of Justice " in 1971, the normative justice theory has risen again. Under the influence of these two books, the jurisprudence in the United Kingdom and the United States start showing more philosophical features than that of legal philosophy in the European continent. On the other hand, in European continent, the concept of "approach of legal philosophy" was used from the end of the 18th century since Hugo (Gustav Hugo, 1764-1844) published the book

named "The Law of Natural Law as a Method of Positive Law" in 1797 (Liu, 2005, pp. 13-18).

In 1800, Wilhelm Traugott Krug (1770–1842), the successor of Königberg's philosophy professor, put forward "Aphorismen Zur Philosophie des Rechts" in his book named "Aphorismen Zur Philosophie des Rechts", The term of "Philosophie der Rechts"(Zheng, 1999, pp. 13-19). During that time, legal philosophy and natural law are almost synonymous in many legal books in the European countries. After the collapse of Hegel's huge conceptual philosophy system, historical school of law initiated by Friedrich Karl Savigny (1779-1861) also began to transfer to the concept of positivism. Therefore, in the middle of the 19th century, the term of legal philosophy faced the crisis of "declaration of death." This crisis did not end until the end of the 19th century and the beginning of the 20th century, German jurist Karl Kohm and other scholars began to advocate a theory similar to the theory of British analytical jurisprudence, and tentatively constructed their own basics of jurisprudence. But they received many criticisms, for example, the problem of "euthanasia" would be hard to answer in the scope of jurisprudence. The revival of modern legal philosophy is generally thought to begin with the neo-Kantian philosophy of law in the early 20th century. The representatiive scholars are Rudolf Stammler (1856-1938), Emile Lask (1875-1915), and Radbru. The neo-Kantian philosophy of law is represented by the doctrines of Gustav Radbruch (1878-1949) and Hans Kelsen (1881-1973), among which the value relativist legal philosophy advocated by Radbruch and the pure jurisprudence advocated by Kelsen. It still has great influence in this field. After the 1970s, some legal scholars in Europe also began to use the concept of Rechtstheorie to teach legal philosophy. The similarities and differences between the concepts of jurisprudence and legal philosophy in European continent are also in a great confusion with various opinions like the way in Britain and the United States" (Liu, 2005, p. 17).

The concept of jurisprudence was first introduced in China through the translation of the concept of jurisprudence in Japanese. But as we have mentioned above, the concept of jurisprudence was not derived from Japan. It was also a foreign concept in Japan at first. Only when the concept of jurisprudence introduced from the western world took some time to change and adapt within the culture of Japan can the concept of jurisprudence in Japanese finally showed up. Later, it was introduced to China by Chinese scholar's translation works. At that time, the concept of "legal philosophy" had a robust subjective color in Japan. The famous jurist Sui Ji Chen Zhong was the first person proposed the concept of jurisprudence in 1881, and he removed the metaphysical part of this concept. He also prepared several courses on the theme of legal philosophy, which had never been done in Japanese history. In China, the legal scholar who is the first one to use the concept of "jurisprudence" was Liang Qichao. He took refuge in Japan and studied law here for many years (1873 - 1929). In 1902, Liang Qichao' wrote a book named" The Theory of Jurisprudence in Montesquieu". In this book, he not only used the concept of "jurisprudence" in Japanese but also use the term of "The Spirit of Laws", which is used by Montesquieu. In the book, named "Wan Fa Jing Li", Liang Qichao said that since the Japanese has taken the concept of jurisprudence, we would do that as well , from the explanation: "Japanese translation for this name, from now on." (Fan, 2000, p. 18)

Nowadays, the Chinese legal scholars generally believe that the term of "jurisprudence" originally came from the Japanese scholar Sui Ji Chen Zhong's translation based on the book of Austin from England. According to Sui Ji Chen Zhong's statement: In the 3rd year of the Meiji period, the concept of the "Legal Theory" in the rules of the University of South Campus was an unpleasant name. Besides, the French law school Scholars called this subject "natural law", and the Tokyo Kaicheng School, which was established in the 7th year of Meiji, used the name "on law" when setting up law subjects. In the 14th year of Meiji, when we opened up this subject, we considered that there is a "talk of law" in Buddhism. If we use "on law ", it would always sound like a lecture, and as a scientific name, this word "On" is not appropriate. Thus, it is the word "jurisprudence" that has been used. Moreover, if it was translated into "legal philosophy", it would have the character of philosophy. Therefore, to eliminate the limitation of metaphysics, the word "jurisprudence" should be used. Therefore, this concept final settles down by the word "jurisprudence" (Liu, 2005; Sui Ji, 1980, p. 174).

The word "Jurisprudentia" means "legal knowledge" or "technical technology" in Latin (Wang, 1997, p. 206). After continuous evolution, it became Jurisprudence. Before the 19th century, the fact of law study as an independent discipline did not come into binging yet. Law belongs to the scope of philosophy and political science at that time. The law itself is only a simple concept, not to mention the discipline of jurisprudence. The research of law focused on the natural law because most law scholars were more like philosophers than law scholars at that time. This situation did not change until the time of Bentham and Austin. Bentham and Austin, as the representatives of the British analytic school, have a strong resentment toward the traditional rationalism of law. Thus, they choose the concept of "Jurisprudence" instead of the concept of "legal philosophy". In their perspective, the concept of "Jurisprudence" is a concept that has the character of positivism, while the concept of "legal philosophy" has the character of rationalism. Therefore, the concept of "Jurisprudence" is the right choice for the claim of legal positivism (Wan, 2015, pp. 1-2) Unlike what the previous legal scholar would do, Bentham took positivism method, which is to study the

subject in a particularly detailed way, and he analyzed law in the book named "The Province of Jurisprudence Determined". Later, this particular book named " The Province of Jurisprudence Determined", became the first one book which created the study of Jurisprudence in western world. Besides, Austin also inherited and carried forward this empirical claim (Austin, 2013).

In the early days, the development of legal positivism is not mature enough. The main antecedent of legal positivism is Empiricism and there were lots of empiricism philosophy on the European continent. They claimed that law study is to observe the experience and seek truth from the observation carefully, but they went too far and ignore the value of rational thinking. In the end, these scholars of legal positivism split experience and rationality, observation and thinking, and they even deny the value of thoughts (Wan, 2015, p. 2). Under the influence of critical comment, the legal positivism made many changes in the view of rational thinking on the base of highlight the value of experience and practice. In other words, they added up some reasonable thinking part in their theory. Among scholars of legal positivism, Pound is a representative character. He criticized various schools in the 19th and 20th centuries and made great efforts in trying to give the field of law a clear explanation. As the founder of sociological law, he comprehensively compiled the definition of jurisprudence, pointing out: from the earliest time, the term of jurisprudence means legal science. Therefore, the study of jurisprudence should shift from the problems at present to the problems in the future.

On the eve of liberation in China, Japan's legal theory had a significant impact on the domestic jurisprudence community. Under the influence of Japan's legal theory, most domestic legal scholars were in a position where the distinction between jurisprudence and legal philosophy became more and more difficult. To deal with this dilemma, they decided to keep the concept of "jurisprudence", while refuse to accept the concept of "legal philosophy". But with the introduction of Western methodology to China, the theory of the Anglo-American law system also followed closely. Under the influence of those legal thoughts, domestic scholars found themselves were in the confusion about the difference between jurisprudence and legal philosophy again.

2. THEORIES ABOUT "JURISPRUDENCE" AND "LEGAL PHILOSOPHY"

Discussion on the division of disciplines, as H. L. A. Hart observed in the Introduction part of Perelman's book, The Idea of Justice and the Problem of Argument, but by conceiving knowledge as "a structure at the base of which is an indubitable experience of sense given data," they have led to an altogether "misleading contrast between knowledge and opinion". (Gross & Dearin, 2002, p. 19) Judging from the domestic works in China, there are five different theories about "jurisprudence" and "legal philosophy" in general.[1] By combing the relevant documents of jurisprudence and legal philosophy, the author finds that a domestic legal scholar named You Junyi had concluded that there were five kinds of theories about the relationships of jurisprudence and legal philosophy. Although his views are excellent in some degree, Perelman's philosophic quest for a logic of value judgments was a search for a rational basis for adjudicating truth claims among disputed and conflicting notions. From a objective point of view, the views of scholars represented by Professor Shu Guoying reveal the essence of jurisprudence more deeply. Therefore, it is necessary to reflect and adjust the order of these five typical doctrines.

The first type of doctrine is "Inclusion Theory." Many scholars who hold this theory believe that the difference between jurisprudence and legal philosophy is nothing but the difference between something general and something special. The former one is the basic theory of law, and the latter one is a more detailed and specific theory with obvious characteristics. Those scholars who support this theory are professor Shu Guoying (China University of Political Science and Law), professor Ge Hongyi (Zhejiang University), professor Sun Guohua (Renmin University of China), professor Xiuyi Ting (Fudan University). Among these scholars, Professor Shu Guoying is the "top pillar" of the study of jurisprudence. He made a point of view about this issue that there are three basic themes, namely jurisprudence, legal philosophy, and sociology of law. Then these three basic themes are divided into various smaller subjects. what's more, professor Shu mentioned that the IVR (International Association for Philosophy of I aw and Social Philosophy) had discussed this theme for many times in successive World Conferences. Based on the conclusions of those discussions, it is clear that the use of these two concepts are different in the countries of common law system and the countries of European continent (Ge, 1999, pp. 8-10).

The second type of doctrine is " Equivalent Theory." Equivalent theory appeared very early. Therefore, it can be found in many early works and textbooks. Many authors support the "equivalent doctrine" view, especially among some authoritative scholars. According to the investigation of author, the domestic scholars who support the "equivalent doctrine" view are professor Zhang Wenxian (Jilin University, President of China Law Society), professor Guo Daohui (Peking University),

[1] There are not only five doctrines, but also other kinds of doctrines. Because of many people who support these doctrines is small. Therefore, in this article, I will not elaborate on different theories. See You Junyi. On the Relationship between Jurisprudence and Legal Philosophy. Politics & Law, 2008(7), 120-124.

professor Shen Zongling (Peking University), professor Sun Guohua (Renmin University of China), professor Chen Shouyi (Peking University), professor Zhang Hongsheng (Peking University), professor Ge Hongyi (Zhejiang University)), professor Lu Yun (Southwest University of Political Science and Law), professor Fu Zitang (Southwest University of Political Science and Law) professor Zhuo Zeyuan (Central Party School of the Communist Party of China), professor Wang Guochun (Hunan Normal University).

The third type of doctrine is the "similar theory. The "similar theory" is divided into two types. One type is to avoid the discussion of the relationship between the concept of jurisprudence and the concept of legal philosophy. The other type does not avoid the discussion of the relationship between the concept of jurisprudence and the concept of legal philosophy. But although those viewpoints put forward by these scholars who do not avoid such discussion are in detail, those viewpoints are still so ambiguous that it is hard to tell what do those scholars mean.

The fourth type of doctrine is the "crossing theory." From the viewpoint of crossing Theory, the concept of jurisprudence and the concept of legal philosophy neither completely different with each other, nor completely similar to each other. Scholars who support the "crossing theory." perspective are professor Ni Zhengmao (Shanghai University of Political Science and Law) and Professor Xu Xianming (former president of China University of Political Science and Law, vice president of the Supreme People's Procuratorate). The representative character of this doctrine is Professor Xu Xianming, whose theory is explained more clearly. In his new edition of Jurisprudence textbook, it is mentioned that the jurisprudence in the West is that the doctrine of legal philosophy is inaccurate. The research scope of the two is partially overlapping, but it is never the same, and it is impossible to replace the concept of legal philosophy with the concept of jurisprudence or to replace the concept of jurisprudence with the concept of legal philosophy.

The fifth type of doctrine is "Juxtaposition Theory." The juxtaposition theory holds that the concept of legal philosophy and the concept of jurisprudence are two distinctly separate and independent concepts. The combination or integration of these two concepts is only a short-lived phenomenon. In the long run, the various disciplines are continually diverging, and there are strict boundaries between those different disciplines. Representative scholars of this theory are professor Lu Shilun (Renmin University of China), professor Wen Zhengbang (Renmin University of China), and professor Yan Cunsheng (Northwest University of Political Science and Law). Professor Yan Cunsheng believes that theory of law includes both the concept of jurisprudence and the concept of legal philosophy. He is a professor at the Northwest University of Political Science and Law. He believes that political, economic, sociological, and methodological comparisons related to law should also be included into theory of law. From the aspect of narrow sense, these two concepts are different. They are entirely different in the aspect of object of the study, research methods and purposes. The reality that the academic community have different views about this issue also indicates that these two concepts are not the same.

In summary, different scholars hold different views on the relationship between jurisprudence and legal philosophy. But one thing that can be agreed upon is that the constant exploration of the attributes of the discipline of law and the elimination of the flaws of those theoretical methods is necessary. What we need to do further is to find the essential characteristics of the legal disciplines, and compare the explanatory power of each doctrine and the institutional integrity of the doctrine according to these crucial features. And since Aristotle, many legal scholars have made effort in the establishment of concepts of law to improve the understanding of law. In other words, the nature of jurisprudence is the kind of relationship that differs from pure natural science. Jurisprudence has its inherent scientific characteristics—it is a discipline in which the content of discussion involves value philosophy and it is a discipline that judges "right and wrong". The truth of jurisprudence is the discipline of art that strives to pursue "fairness and justice."

3. JURISPRUDENCE IN BROAD SENSE AND NARROW SENSE

It is worth mentioning that Leibniz put forward the concept of "legal philosophy." He is a philosopher, scientist, and mathematician and he says that any there are not two identical leaves in the world. It must have particular reasons for there are various viewpoints. The fundamental reason is that the basis and thinking method of these jurists are different from each other. The basis of those scholars who believe in "crossing theory" or "inclusion theory", is often the argumentation point put forward by the scholars from European continent countries. The basis of those scholars who believe in "similarity theory" or "equivalent theory" is the viewpoint from the Oxford Dictionary of Law and the Encyclopedia Britannica (Wen, 2001, p. 56-58). Besides, The basis of those scholars who believe in "juxtaposition theory" or "cross-disciplinary theory" is some similar points put forward by their predecessors and the needs of future development.

In the author's opinion, it is acceptable and rational to look back at the views of predecessors and authorities, but it is not right to develop our judgment only on this basis. There are so many different views among those predecessors and influences. We must dig up the cores of those different views if we want to make progress on this

issue.

At the end of the 17th century, the European scholars gave the concept of "legal philosophy" theory, and then in 1832 the English jurist Austin proposed the concept of "jurisprudence". The Japanese jurist, Sui Ji Chen Zhong, also put forward another concept of "jurisprudence" in 1881. Later, the American and English jurists put forward the argument basis for the mixed use of the concept of "jurisprudence" and the concept of "legal philosophy." Thus, it is clear that the views of these two concepts in foreign jurists have always been unclear. In academic research, it is necessary to prevent the danger from authority. We should admire truth, instead of power.

In the author's view, the law is the rule of society which is made by the country. Jurisprudence study the theory of law. Jurisprudence belongs to the theory of law. The s subject of jurisprudence is the law itself. The research focuses on the internal development mechanism of law instead of a specific code or unique legal phenomena. Instead of studying the fundamental question of "what it is ", jurisprudence study a higher-level issue like "why it is " and "what ought to be". Instead of studying the law in practice, it pays more attention to the "dead law" and " the logic question.

Based on theories and viewpoints mentioned above, the author believes that: in the one hand, a jurisprudence system in a broad sense should be created. On the other side, there is jurisprudence in the narrow sense. There is some difference between the concept of legal philosophy and the concept of jurisprudence in the narrow sense. The concept of jurisprudence in the broad sense includes legal philosophy, sociology of law, legal norms, and guiding jurisprudence such as Marxism-Leninism. This is the concept of jurisprudence in the broad sense because it combines philosophy and jurisprudence in the narrow sense. Both the concept of " jurisprudence in the narrow sense" and the concept of "legal philosophy" belong to jurisprudence in the broad sense. From this aspect, these two concepts are parallel and independent, so there is something right in "juxtaposition theory.

Many scholars are unsatisfied with the reality that there is somewhere that the concept of jurisprudence in the narrow sense and the concept of legal philosophy is overlapped. But this is because the concept of jurisprudence is not perfect. With the pass of time and the development of legal theory, this problem will be solved sooner or later. A large number of scholars in China have been studying the logic system of legal philosophy for a long time. The well-known scholars include professor Wen Zhengbang, professor Ni Zhengmao, professor Lu Shilun, professor Shen Zongling, professor Zhang Wenxian, etc. With their effort and their successors' efforts, it is hopeful to make a new situation in the field of law theory.

In contrast with the concept of "jurisprudence", legal philosophy pays more attention to philosophical thinking. Legal philosophy is more abstract and idealistic. To be specific, legal philosophy may walk away from real life and law in reality, while narrow jurisprudence is closer to real life and doctrine.

4. DIALECTICAL THINKING ON LEGAL PHILOSOPHY AND JURISPRUDENCE

After a long evolution in the history of legal thought, jurisprudence and legal philosophy were derived from the two major legal systems in the world. The philosophical context of these two concepts is different and the development of history background is dynamic. Therefore, it is also necessary to consider the relationship between these two concepts with a dynamic view.

4.1 The Connection Between Legal Philosophy and Jurisprudence

First of all, jurisprudence and legal philosophy emerge in the background that the common law and the civil law were exchanging with each other. Secondly, the original of the concept of jurisprudence was from Analytical jurisprudence. In the stage of the creation of this concept, Analytical jurisprudence has great dissatisfaction with the theorists at that time. Therefore, they pay great attention to empirical study. The method that they took is positivistic method. There is no term of jurisprudence in the current civil law system. The scholars in civil law system focus on the development of concepts. Therefore, there is strict and precise theoretical system in civil law system.

Thirdly, if we analyze this issue from the dynamic perspective, it is not difficult to find that the legal theories of common law system are not static. The Western methodologists are not satisfied with the definition of the current jurisprudence. They believe that the current jurisprudence logic is not complete enough. It is inevitably to be expanded in the future.

Currently, the terms of jurisprudence and legal philosophy are still in chaos. The development of jurisprudence in China is still not perfect. In this regard, it is necessary to explore the context of jurisprudence and legal philosophy further and clarify the relationship between these two concepts.

4.2 The Difference Between Legal Philosophy and Jurisprudence

4.2.1 Fields

The fields of the concept of Legal philosophy and the concept of jurisprudence are different. Legal philosophy is both a part of philosophy and a part of law. The philosophy part of legal philosophy adds a humanistic spirit into law, which makes the law a warmer regulation. Jurisprudence belongs to the branch of law, and it is also the reference basis for the formulation of the whole legal systems. It provides theoretical support for the specific code.

4.2.2 Nature

In tradition, legal philosophy is to answer the legitimate question from the aspect of philosophy. Jurisprudence is to explain the legal question from the basic knowledge of legal science. At present, domestic scholars' views on legal philosophy is inconsistent, but more and more scholars regard it as an interdisciplinary subject. To be specific, it is mixed the study law and the study of philosophy. From this point of view, legal philosophy has specific nature of rational thinking. Tracing back to the roots, when legal philosophy was first proposed based on the basic idea of dialectical thinking, Kant and Hegel have already said that matters related to the basic theory of law are not in the scope of the concept of legal philosophy.

The founder of the concept of jurisprudence is the Analytical jurisprudence. Its theoretical basis is empiricism. It is amended by post-positivist jurisprudence. The comprehensive law schools and sociology law school develop the concept of jurisprudence. From studying general jurisprudence, it continuously provides theoretical evidences for specific law study.

4.2.3 Object of Study

Legal philosophy and jurisprudence are different in the aspect of object of study (Li, 2013, p. 6). To be specific, the object of study for legal philosophy is not specific law itself, but the spirit and reason of law. Hegel once said the object of study for legal philosophy is concepts and its perfection. Legal philosophy is to seek the general and the universal rule of law. It stands at a high point and watches over the matter in the future or the past. In other words, it is not limited to the law at present.

In contrast with legal philosophy, the object of study of jurisprudence is more specific and reachable. Though jurisprudence has been developed and expanded a lot over these years, its object of study is still closely connected with the law at present. Pound once said that the object of study of jurisprudence not only is the definition and purpose of "law", but also the value of law and the system of law. The difference between legal philosophy and jurisprudence is that the study of the latter one is always the law at present. In other words, jurisprudence is not a discipline which studies the law in the past or in the future. It studies the law in reality and explains it.

4.2.4 Research Methods

The research methods of legal philosophy are different from the research methods of jurisprudence. Legal philosophy draws on the tradition of dialectical thinking, and its logical thinking is more abstract and precise. Legal philosophy is used as a more rational research method than that of Jurisprudence. Therefore, after the observation of legal phenomena, it explores the internal reason behind the surface. The perspective of legal philosophy is from a higher standing point. On the contrary, jurisprudence draws on experience and reality. It is experientialism. In legal studies, legal scholars are concerned with the real problems of law. They make efforts to bring out the most reasonable rules for people who live at present. In short, jurisprudence is to answer the question of "yes" and "no" for the present, while legal philosophy is to answer the question of "ought to" or "not ought to" for the past, present, and future. Thus, the method commonly used in legal philosophy is the method of rationalism, while the method commonly used in jurisprudence is the method of empiricism. For example, "the death penalty for the murderer", from the perspective of legal philosophy, it is the value and right of human that would be analyzed, while from the standpoint of jurisprudence, it is the value and effects of law would be explained (Shu, 2010).

4.2.5 Research Purposes

The research purposes are different between legal philosophy and jurisprudence. The research purposes of legal philosophy are to seek the essence of the law explore the development of law and to decide its future direction, while the research purposes of jurisprudence are to refine the concepts of law at present and solve the hard question in law. Therefore, it is clear that legal philosophy aims at the issue of law in the level of philosophy, while jurisprudence aims at the issue of law in the level of practicing law. Under the influence of empiricism, jurisprudence tends to take over the job of guide the application of law.

CONCLUSION

In conclusion, "Legal philosophy" is a discipline that mixed up with the character of legal and the character of philosophy. It is to review the law in the level of philosophy. It answers the fundamental question about value and right in law. It adds eternal truth and the spirit of humanity into law study. Jurisprudence is a discipline which is derived from the reform of rationalism. Legal scholars introduce a brand-new method of studying law by bringing in the concept of jurisprudence. With the development of jurisprudence, the law becomes an independent discipline. Because jurisprudence provides the theory of law for the application of law, then the reason for the law as a separate discipline become sufficient enough. In other words, jurisprudence is the study of the theory of law. It provides the reason for the existing of law. Thus, though the concept of legal philosophy and jurisprudence may have someplace overlapped in the scope of the object of study, the research methods and purpose, the values of these two concepts are different. It is time for us to make it clear that these two concepts should be different. Only in this way, legal as a discipline can be developed healthily.

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